



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket Number USCG-2016-0077

RIN 1625-AA00

Safety Zone, Daytona Beach Wings and Waves Air Show; Atlantic Ocean, Daytona Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a safety zone on the waters of the Atlantic Ocean east of Daytona Beach, Florida during the Daytona Beach Wings and Waves Air Show. This action is necessary to provide for the safety of life on the navigable waters surrounding the event. This safety zone will be enforced daily 11 a.m. to 4:30 p.m., from October 6 through October 9, 2016. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port (COTP) Jacksonville or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-0077 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone (904) 714-7616, email Allan.H.Storm@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

|        |                                 |
|--------|---------------------------------|
| CFR    | Code of Federal Regulations     |
| DHS    | Department of Homeland Security |
| FR     | <b>Federal Register</b>         |
| NPRM   | Notice of proposed rulemaking   |
| §      | Section                         |
| U.S.C. | United States Code              |

**II. Background, Purpose, and Legal Basis**

On December 15, 2015, Embry Riddle Aeronautical University/David Schultz Airshows LLC submitted a marine event application to the Coast Guard for the Daytona Beach Wings and Waves Air Show that will take place from October 6 through 9, 2016. The air show will consist of various flight demonstrations over the Atlantic Ocean, just offshore from Daytona Beach, FL. Over the years, there have been unfortunate instances of aircraft mishaps that involve crashing during performances at various air shows around the world. Occasionally, these incidents result in a wide area of scattered debris in the water that can damage property or cause significant injury or death to the public observing the air shows from the water. The Captain of the Port (COTP) Jacksonville has determined that a safety zone is necessary to protect the general public from hazards associated with aerial flight demonstrations.

The purpose of the rulemaking is to ensure the safety of vessels and persons during the air show on the navigable waters of the Atlantic Ocean in Daytona Beach, FL. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

**III. Discussion of Proposed Rule**

The COTP proposes to establish a safety zone from 11 a.m. to 4:30 p.m. on October 6 through October 9, 2016. The safety zone will encompass all waters within an area approximately two nautical miles parallel to the shoreline, and one half nautical mile out into the Atlantic Ocean offshore from Daytona Beach, Florida. The duration of the zone is intended to ensure the safety of the public and these navigable waters during the aerial flight demonstrations. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text the Coast Guard is proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for five and a half hours on

each of the four days the air show is occurring. Moreover, the Coast Guard would issue a broadcast notice to mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not

retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would prohibit persons and vessels from transiting through a one square nautical mile regulated area during a four day air show lasting five and a half hours daily. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all

comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0077 to read as follows:

§ 165.T07-0077 Safety Zone; Daytona Beach Wings and Waves Air Show, Atlantic Ocean, Daytona Beach, FL.

(a) Regulated Area. The following regulated area is a safety zone located offshore from Daytona Beach, FL. All waters of the Atlantic Ocean encompassed within an imaginary line connecting the following points: starting at Point 1 in position 29°14'44.72"N, 081°0'46.90"W; thence northeast to Point 2 in position 29°14'58.74"N, 081°0'16.18"W; thence southeast to Point 3 in position 29°13'3.80"N, 080°59'21.78"W; thence southwest to Point 4 in position 29°12'54.63" N, 080°59'53.87"W; thence northwest back to origin. These coordinates are based on North American Datum 1983.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Jacksonville in the enforcement of the regulated area.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at 904-714-7557, or a designated representative via VHF-FM radio on channel 16, to request authorization. If



authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated area through Broadcast Notice to Mariners via VHF-FM channel 16 or by on-scene designated representatives.

(d) Enforcement Period. This section will be enforced daily 11 a.m. to 4:30 p.m. from October 6 through October 9, 2016.

Dated: June 27, 2016

J. F. Dixon,  
Captain, U.S. Coast Guard,  
Captain of the Port Jacksonville .

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